

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION**

Benjamin E. King, Sr.,

Civil No. 08-131 DWF/AJB

Plaintiff,

v.

**REPORT AND RECOMMENDATION**

Department of Veterans Affairs,

Defendant.

Benjamin E. King, Sr., 2132 Forest Dr. NE, Columbia Heights, Minnesota 55421, pro se plaintiff.

This matter comes before the Magistrate Judge, Arthur J. Boylan, 638 U.S. Courthouse, 316 No. Robert St., St. Paul, MN 55101, for report and recommendation to the district court that this matter be dismissed for failure to prosecute. The court issued an Order dated January 17, 2008, denying plaintiff's Application to Proceed In Forma Pauperis, and allowing him 30 days in which to file an amended complaint and either pay the full \$350 filing fee or submit an amended IFP application, failing which it would be recommended the action be dismissed without prejudice for failure to prosecute.

Upon examination of the docket in this case the magistrate judge finds that the petitioner has not complied with the requirements of the January 17, 2008, Order, and further, plaintiff has sent a letter to the court in which he expressly "inform[s] the court of [his] wish to drop the Amended

Complaint Application against the Department of Veterans Affairs, et al., I do this without prejudice.”<sup>1</sup>

The court hereby interprets this statement as plaintiff’s expression of desire to voluntarily dismiss the action without prejudice, rather than file pay fees and/or file an amended complaint at this time.

Therefore, **IT IS HEREBY RECOMMENDED** that this matter be **dismissed** without prejudice.

Dated: March 28, 2008

s/ Arthur J. Boylan  
Arthur J. Boylan  
United States Magistrate Judge

Pursuant to Local Rule 72.1(c)(2), any party may object to this Report and Recommendation by filing with the Clerk of Court, and by serving upon all parties, written objections which specifically identify the portions of the Report to which objections are made and the bases for each objection. This Report and Recommendation does not constitute an order or judgment from the District Court and it is therefore not directly appealable to the Circuit Court of Appeals. Written objections must be filed with the Court before April 8, 2008.

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<sup>1</sup> Docket No. 6.